IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 13455 of 2007(B)

PETITIONER:

M/S.MERCHEM LTD, FACTORY AT MUGHINGAM ROAD,UDYOGAMANDAL, ELOOR AND AT 4/IC DEVELOPMENT AREA, MUPPATHADOM P.O., ALWAYE, ERNAKUOLAM DISTRICT - 683 102,REP. BY THAMBI P.V., DEPUTY MANAGER, FINANCE.

BY ADV. SRI.A.KUMAR

RESPONDENTS:

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1. DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.

2. ASSISTANT COMMISSIONER, SPECIAL CIRCLE (KVAT),MATTANCHERRY, DEPT.OF COMMERCIAL TAXES, ERNAKULAM.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.13455 of 2007

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Dated this the 17th day of July, 2007.

JUDGMENT

The W.P. is filed challenging orders of the appellate authority demanding security for granting stay against recovery of disputed tax. As a condition for stay, the appellate authority directed payment of one third of the disputed tax for the years 2000-2001 and 2001-2002. The petitioner appears to have remitted the amount. It is not known whether the payment includes interest demanded under Ext.P2A which is above Rs.10 lakhs. The appellate authority only extended time for furnishing security. The petitioner expressed inability to furnish security in the form of Bank Guarantee. Alternate security could probably be landed properties. The W.P. came up for admission on 17.4.2007 and last date for furnishing Bank Guarantee under the order of the Deputy Commissioner expired on 20.4.2007. Since stay order was no longer in force after petitioner failed to comply with the direction of the Deputy Commissioner, even balance disputed tax could have been recovered. Respondents appear to be thoroughly indifferent in the matter. The statute does not provide for granting stay against recovery of disputed tax without furnishing security.

However, if petitioner is in financial difficulties, it is for the second respondent to consider liabilities and accept any alternate reasonable security. The W.P. is disposed of directing the second respondent to consider petitioner's request for any alternate security. The second respondent is also free to extend time for furnishing security.

C.N.RAMACHANDRAN NAIR
Judge

pms